

SUBCHAPTER G : FLEXIBLE PERMITS

PERMIT APPLICATION

§116.710. Applicability.

(a) Flexible permit. A person may obtain a flexible permit which allows for physical or operational changes as provided by this subchapter as an alternative to obtaining a new source review permit under §116.110 of this title (relating to Applicability), or in lieu of amending an existing permit under §116.116 of this title (relating to Amendments and Alterations). A person may obtain a flexible permit pursuant to §116.711 of this title (relating to Flexible Permit Application) for a facility, group of facilities, or account before any actual work is begun, provided however:

- (1) only one flexible permit may be issued at an account site;
- (2) modifications to existing facilities covered by a flexible permit may be handled through the amendment of an existing flexible permit;
- (3) permitting of a new facility may be handled through the amendment of a flexible permit; and
- (4) a flexible permit may not cover sources at more than one account site.

(b) Operations certification. Any person who obtains a flexible permit under this subchapter shall comply with §116.110(b) of this title.

(c) Change in ownership. The new owner of a facility, group of facilities, or account shall comply with §116.110(c) of this title, provided however, that all facilities covered by a flexible permit must change ownership at the same time and to the same person, or both the new owner and existing permit holder must obtain a permit alteration allocating the emission caps or individual emission limitation prior to the transfer of the permit by the Texas Natural Resource Conservation Commission (TNRCC). After the sale of a facility or facilities, but prior to the transfer of a permit requiring a permit alteration, the original permit holder remains responsible for ensuring compliance with the existing flexible permit and all rules and regulations of the TNRCC.

(d) Submittal under seal of registered professional engineer. All applications for a flexible permit or flexible permit amendment shall comply with §116.110(d) of this title.

(e) Responsibility for flexible permit application. The owner of the facility, group of facilities, or account or the operator of the facility, group of facilities, or account who is authorized to act for the owner is responsible for complying with this section, except as provided by subsection (c) of this section.

§116.711. Flexible Permit Application.

Any application for a new flexible permit or flexible permit amendment must include a completed Form PI-1 General Application. The Form PI-1 must be signed by an authorized representative of the applicant. The Form PI-1 specifies additional support information which must be provided before the application is deemed complete. In order to be granted a flexible permit or flexible permit amendment, the owner or operator of the proposed facility shall submit information to the Texas Natural Resource Conservation Commission (TNRCC) which demonstrates that all of the following are met.

(1) Protection of public health and welfare. The emissions from the proposed facility, group of facilities, or account as determined pursuant to §116.716 of this title (relating to Emission Caps and Individual Emission Limitations), will comply with all rules and regulations of the TNRCC and with the intent of the Texas Clean Air Act, including protection of the health and physical property of the people. In considering the issuance of a flexible permit for construction or modification of any facility, group of facilities, or account within 3,000 feet or less of an elementary, junior high/middle, or senior high school, the TNRCC shall consider any possible adverse short-term or long-term side effects that an air contaminant or nuisance odor from the facility, group of facilities, or account may have on the individuals attending these school facilities.

(2) Measurement of emissions. The proposed facility, group of facilities, or account will have provisions for measuring the emission of air contaminants as determined by the Executive director. This may include the installation of sampling ports on exhaust stacks and construction of sampling platforms in accordance with guidelines in the TNRCC "Compliance Sampling Manual."

(3) Best Available Control Technology (BACT). The proposed facility, group of facilities, or account will utilize BACT, with consideration given to the technical practicability and economic reasonableness of reducing or eliminating the emissions from the facility on a proposed facility, group of facilities, or account basis. Control technology beyond BACT may be used on certain facilities to provide the emission reductions necessary to comply with this requirement on a group of facilities or account basis, provided however, that the existing level of control may not be lessened for any facility. For new facilities, the use of BACT shall be demonstrated for the individual facility.

(4) Federal New Source Performance Standards (NSPS). The emissions from each affected facility as defined in 40 Code of Federal Regulations (CFR) Part 60 will meet at least the requirements of any applicable NSPS as listed under Title 40 CFR Part 60, promulgated by the United States Environmental Protection Agency (EPA) pursuant to authority granted under the Federal Clean Air Act (FCAA), §111, as amended.

(5) National Emission Standards for Hazardous Air Pollutants (NESHAPS) and Maximum Achievable Control Technology (MACT). The emissions from each facility as defined in 40 CFR Part 61 will meet at least the requirements of any applicable NESHAPS, as listed under 40 CFR Part 61, or any MACT standard, promulgated by EPA pursuant to authority granted under the FCAA, §112, as amended.

(6) Performance demonstration. The proposed facility, group of facilities, or account will achieve the performance specified in the flexible permit application. The applicant may be required to submit additional engineering data after a flexible permit has been issued in order to demonstrate further that the proposed facility, group of facilities, or account will achieve the performance specified in the flexible permit. In addition, initial compliance testing with ongoing compliance determined through engineering calculations based on measured process variables, parametric or predictive monitoring, stack monitoring, or stack testing may be required.

(7) Nonattainment review. If the proposed facility, group of facilities, or account is located in a nonattainment area, each facility shall comply with all applicable requirements under the undesignated head concerning nonattainment review in Subchapter B of this chapter.

(8) Prevention of Significant Deterioration (PSD) review. If the proposed facility, group of facilities, or account is located in an attainment area, each facility shall comply with all applicable requirements under the undesignated head concerning PSD in Subchapter B of this chapter.

(9) Air dispersion modeling or ambient monitoring. Computerized air dispersion modeling and/or ambient monitoring may be required by the TNRCC Permits Program to determine the air quality impacts from the facility, group of facilities, or account.

(10) Application content. In addition to any other requirements of this chapter, the applicant shall:

(A) identify each air contaminant for which an emission cap is desired;

(B) identify each facility to be included in the flexible permit;

(C) identify each source of emissions to be included in the flexible permit and for each source of emissions identify the emission point number (EPN) and the air contaminants emitted;

(D) for each emission cap, identify all associated EPNs and provide emission rate calculations based on the expected maximum capacity and the proposed control technology;

(E) for each individual emission limitation, identify the EPN and provide emission rate calculations based on the expected maximum capacity and the proposed control technology.

(11) Proposed control technology and compliance demonstration. The applicant shall specify the control technology proposed for each unit to meet the emission cap and demonstrate compliance with all emission caps at expected maximum production capacity.

§116.714. Application Review Schedule.

The flexible permit application will be reviewed by the Texas Natural Resource Conservation Commission in accordance with §116.114 of this title (relating to Application Review Schedule).

Adopted November 16, 1994

Effective December 8, 1994

§116.715. General and Special Conditions.

(a) Flexible permits may contain general and special conditions. The holders of flexible permits shall comply with any and all such conditions. Upon a specific finding by the executive director that an increase of a particular air contaminant could result in a significant impact on the air environment, or could cause the facility, group of facilities, or account to become subject to review under the undesignated headings of Subchapter B of this chapter (relating to Nonattainment Review or Prevention of Significant Deterioration Review), the permit may include a special condition which requires the permittee to obtain written approval from the executive director before constructing a facility under a standard exemption or standard permit.

(b) A pollutant specific emission cap or multiple emission caps and/or individual emission limitations shall be established for each air contaminant for all facilities authorized by the flexible permit.

(c) The following general conditions shall be applicable to every flexible permit.

(1) Voiding of permit. A flexible permit or flexible permit amendment under this subchapter is automatically void if the holder fails to complete construction as specified in the flexible permit. Upon request, the executive director may grant a one time 12-month extension of the date to complete construction. This section does not apply to physical or operational changes allowed without an amendment under §116.721 of this title (relating to Amendments and Alterations).

(2) Construction progress. The start of construction, construction interruptions exceeding 45 days, and completion of construction shall be reported to the appropriate regional office of the Texas Natural Resource Conservation Commission (TNRCC or commission) not later than 15 working days after occurrence of the event.

(3) Start-up notification. The appropriate Air Program Regional Office of the TNRCC and any local program having jurisdiction shall be notified prior to the commencement of operations of the facilities authorized by the permit in such a manner that a representative of the TNRCC may be present. Phased construction, which may involve a series of facilities commencing operations at different times, shall provide separate notification for the commencement of operations for each facility.

(4) Sampling requirements. If sampling of stacks or process vents is required, the flexible permit holder shall contact the Source and Mobile Monitoring Section of the TNRCC Office of Air Quality prior to sampling to obtain the proper data forms and procedures. All sampling and testing

procedures must be approved by the executive director and coordinated with the appropriate Air Program Regional Office of the TNRCC. The flexible permit holder is also responsible for providing sampling facilities and conducting the sampling operations or contracting with an independent sampling consultant.

(5) Equivalency of methods. It shall be the responsibility of the flexible permit holder to demonstrate or otherwise justify the equivalency of emission control methods, sampling or other emission testing methods, and monitoring methods proposed as alternatives to methods indicated in the conditions of the flexible permit. Alternative methods shall be applied for in writing and must be reviewed and approved by the executive director prior to their use in fulfilling any requirements of the permit.

(6) Recordkeeping. A copy of the flexible permit along with information and data sufficient to demonstrate continuous compliance with the emission caps and individual emission limitations contained in the flexible permit shall be maintained in a file at the plant site and made available at the request of personnel from the TNRCC or any air pollution control program having jurisdiction. For facilities that normally operate unattended, this information shall be maintained at the nearest staffed location within Texas specified by the permit holder in the permit application. This information may include, but is not limited to, emission cap and individual emission limitation calculations based on a 12-month rolling basis and production records and operating hours. Additional recordkeeping requirements may be specified in special conditions attached to the flexible permit. Information in the file shall be retained for at least two years following the date that the information or data is obtained.

(7) Maximum allowable emission rates. A flexible permit covers only those sources of emissions and those air contaminants listed in the table entitled "Emission Sources - Emissions Caps and Individual Emission Limitations" attached to the flexible permit. Flexible permitted sources are limited to the emission limits and other conditions specified in the table attached to the flexible permit.

(8) Emission cap readjustment. If a schedule to install additional controls is included in the flexible permit and a facility subject to such a schedule is taken out of service, the emission cap contained in the flexible permit will be readjusted for the period the unit is out of service to a level as if no schedule had been established. Unless a special provision specifies the method of readjustment of the emission cap, a permit alteration shall be obtained.

(9) Maintenance of emission control. The facilities covered by the flexible permit shall not be operated unless all air pollution emission capture and abatement equipment is maintained in good working order and operating properly during normal facility operations. Notification for upsets and maintenance shall be made in accordance with §101.6 and §101.7 of this title (relating to Notification Requirements for Major Upset and Notification Requirements for Maintenance).

(10) Compliance with rules. Acceptance of a flexible permit by a permit applicant constitutes an acknowledgment and agreement that the holder will comply with all Rules, Regulations,

and Orders of the Commission issued in conformity with the Texas Clean Air Act and the conditions precedent to the granting of the permit. If more than one state or federal rule or regulation or flexible permit condition are applicable, then the most stringent limit or condition shall govern and be the standard by which compliance shall be demonstrated. Acceptance includes consent to the entrance of Commission employees and agents into the permitted premises at reasonable times to investigate conditions relating to the emission or concentration of air contaminants, including compliance with the flexible permit.

(d) There may be additional special conditions attached to a flexible permit upon issuance or amendment of the permit. Such conditions in a flexible permit may be more restrictive than the requirements of Title 30 of the Texas Administrative Code.

Adopted November 16, 1994

Effective December 8, 1994

§116.716. Emission Caps and Individual Emission Limitations.

(a) Emission caps. Each emission cap for a specific pollutant will be established as follows:

(1) emissions will be calculated for each facility based on application of current Best Available Control Technology at expected maximum capacity;

(2) the calculated emissions will be summed.

(b) Individual emission limitations. An individual emission limitation will be established in the same permit for each pollutant not covered by an emission cap for facilities covered by the flexible permit. In addition, an individual emission limitation may be established for a pollutant covered by an emission cap when the expected capacity of a facility is less than the expected maximum capacity to prevent a facility from exceeding emission levels appropriate for the proposed controls.

(c) Readjustment of emission cap. If a facility subject to an emission cap is shut down for a period longer than 12 months, the emission cap shall be readjusted by lowering the emission cap by an amount that the shut down facility contributed to the original calculation of the emission cap. If a new facility is brought into the flexible permit, an emission cap shall be adjusted by modifying the emissions cap accordingly.

(d) Insignificant emission factor. The emission caps and individual emissions limitation calculated pursuant to this section may include an Insignificant Emissions Factor which does not exceed 9.0% of the total emission cap or individual emission limitation.

(e) An emission cap will be readjusted downward for any facility covered by a flexible permit if that facility becomes subject to any new state or federal regulation which would lower emissions or require an emission reduction. The adjustment will be made at the time the flexible permit is amended or altered. If an amendment to a flexible permit is not required to meet the new regulation, then within

60 days of making the change, the permittee must submit a request to alter the permit and include information describing how compliance with the new requirement will be demonstrated.

Adopted November 16, 1994

Effective December 8, 1994

§116.717. Implementation Schedule for Additional Controls.

If a facility requires the installation of additional controls to meet an emission cap for a pollutant, the flexible permit shall specify an implementation schedule for such additional controls. The permit may also specify how the emission cap will be adjusted if such a facility is taken out of service or fails to install the additional control equipment as provided by the implementation schedule.

Adopted November 16, 1994

Effective December 8, 1994

§116.718. Significant Emission Increase.

An increase in emissions from operational or physical changes at an existing facility covered by a flexible permit is insignificant, for the purposes of state new source review under this subchapter, if the increase does not exceed either the emission cap or individual emission limitation. This section does not apply to an increase in emissions from a new facility nor to the emission of an air contaminant not previously emitted by an existing facility.

Adopted November 16, 1994

Effective December 8, 1994

§116.720. Limitation on Physical and Operational Changes.

Neither operational nor physical changes authorized under this subchapter may result in an increase in actual emissions at facilities not covered by the flexible permit unless those affected facilities are authorized pursuant to §116.110 of this title (relating to Applicability).

Adopted November 16, 1994

Effective December 8, 1994

§116.721. Amendments and Alterations.

(a) Flexible permit amendments. All representations with regard to construction plans and operation procedures in an application for a flexible permit, as well as any general and special provisions attached, become conditions upon which the subsequent flexible permit is issued. It shall be unlawful for any person to vary from such representation or flexible permit provision if the change will cause a change in the method of control of emissions, the character of the emissions, or will result in a significant increase in emissions, unless application is made to the executive director to amend the flexible permit in that regard and such amendment is approved by the executive director or the Texas Natural Resource Conservation Commission (TNRCC). Applications to amend a flexible permit shall be submitted with a completed Form PI-1 and are subject to the requirements of §116.711 of this title (relating to Flexible Permit Application).

(b) Flexible permit alterations.

(1) A flexible permit alteration is for any variation from a representation in a flexible permit application or a general or special provision of a flexible permit that does not require a flexible permit amendment.

(2) All flexible permit alterations which may involve a change in a general or special condition contained in the flexible permit, or affect control equipment performance, must receive prior approval by the executive director. The executive director shall be notified in writing of all other flexible permit alterations within ten days of implementing the change, unless the permit provides for a different method of notification. Any flexible permit alteration request or notification shall include information sufficient to demonstrate that the change does not interfere with the owner or operator's previous demonstrations of compliance with the requirements of §116.711 of this title, including the protection of public health and welfare. The appropriate TNRCC Regional Office and any local air pollution program having jurisdiction shall be provided copies of all flexible permit alteration documents.

(3) Flexible permit alterations shall not be subject to the requirements of Best Available Control Technology identified in §116.711(3) of this title.

(c) Changes not requiring an amendment or alteration. The following changes do not require an amendment or alteration, except that an amendment is required if the change will cause a change in the method of control of emissions, the character of the emissions, or will result in a significant increase in emissions:

(1) a change in throughput; or

(2) a change in feedstock.

(d) Standard exemption in lieu of permit amendment or alteration.

(1) Notwithstanding subsections (a) or (b) of this section, no permit amendment or alteration is required if the changes to the permitted facility qualify for an exemption under Subchapter C of this chapter (regarding Permit Exemptions) unless prohibited by permit provision as provided in §116.715 of this title (relating to General and Special Conditions). All such exempted changes to a permitted facility shall be incorporated into that facility's permit at such time as the permit is amended or renewed.

(2) Emission increases authorized by standard exemption at an existing facility covered by a flexible permit shall not cause an exceedance of the emissions cap or individual emission limitation.

§116.722. Distance Limitations.

No flexible permit may be issued unless the distance and location restrictions found in §116.117 of this title (relating to Distance Limitations) are met.

Adopted November 16, 1994

Effective December 8, 1994

§116.730. Compliance History.

As part of a flexible permit review, or the review of an amendment of a flexible permit, or renewal of an existing flexible permit, the provisions found in the undesignated head regarding Compliance History in Subchapter B of this chapter shall be applicable to the facility, group of facilities, or account being permitted, amended, or renewed.

Adopted November 16, 1994

Effective December 8, 1994

§116.740. Public Notice and Comment.

Any person who applies for a flexible permit or an amendment to a flexible permit shall comply with the provisions in the undesignated head regarding Public Notification and Comment Procedures in Subchapter B of this chapter.

Adopted November 16, 1994

Effective December 8, 1994

§116.750. Flexible Permit Fee.

(a) Fees required. Any person who applies for a flexible permit or for an amendment to an existing flexible permit shall remit, at the time of application for such permit, a fee as set forth in subsection (b) of this section. Fees will not be charged for flexible permit alterations, changes of ownership, or changes of location of permitted facilities.

(b) Fee amounts. The fee to be remitted with a flexible permit application shall be based on the total annual allowable emissions from the permitted facility, group of facilities, or account for which the flexible permit is being sought. The fee shall be \$25 per ton with the minimum fee being \$450 and the maximum fee \$75,000. For flexible permit amendments, the fee shall be calculated based on \$25 per ton for the incremental emission increase with the maximum fee being \$75,000.

(c) Payment of fees. All permit fees for a flexible permit shall be remitted in the form of a check or money order made payable to the Texas Natural Resource Conservation Commission (TNRCC) and delivered with the application for flexible permit or flexible permit amendment to the TNRCC Office of Air Quality New Source Review Program. Required fees must be received before the agency will begin examination of the application.

(d) Return of fees. Fees must be paid at the time an application for a flexible permit or flexible permit amendment is submitted. If the applicant withdraws the application prior to issuance of the flexible permit or flexible permit amendment, one-half of the fee will be refunded, except that the entire fee will be refunded for any such application for which a standard exemption is allowed. No fees will be refunded after a deficient application has been voided, denied, or after a flexible permit or flexible permit amendment has been issued by the agency.

Adopted November 16, 1994

Effective December 8, 1994

§116.760. Flexible Permit Renewal.

Flexible permits will be renewed in accordance with Subchapter D of this chapter (relating to Permit Renewals).

Adopted November 16, 1994

Effective December 8, 1994